IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

Tr.P(Crl.).No. 38 of 2007()

ST.903/2005 of J.M.F.C. - III, KOCHI

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PETITIONER:

D.TITUS, AGED 73 YEARS,
S/O.DANIEL, REVATHY, S.N.R.A.NO.9,
INDIRA NAGAR, PEROORKADA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENTS:

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1. THE STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. M/S.BUSINESS INDIA CHITTS,
REP.BY M.G.JOHN (PROPRIETOR),
NO.62, G.C.D.A. COMPLEX, MARINE DRIVE,
ERNAKULAM, ERNAKULAM, COCHIN-31.
REP.BY ITS RECOVERY MANAGER, AND POWER OF
ATTORNEY HOLDER K.N.KRISHNA PILLAI.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Tr.P.C.No.38 of 2007

Dated this the 4th day of June, 2007

ORDER

Petitioner is an accused in a prosecution under Section 138 of the N.I Act. The allegation against the petitioner is that he entered into an agreement with the complainant at the office of the complainant at Marine Drive, Ernakulam. There was default in compliance with the directions of the said agreement and thereafter it is alleged that the cheque in question was handed over by the petitioner to the complainant at the office of the complainant at Marine Drive, Ernakulam. That cheque was drawn on a bank at Trivandrum. The petitioner is residing at Trivandrum. It is the case of the petitioner that the allegations are false and that actually the entire transaction was entered into and the signed blank cheque was handed over at Trivandrum. False allegations have been raised to attract jurisdiction at Kochi and with those false allegations complaint has now been filed at Ernakulam. He therefore prays that the case may be transferred to the competent court at Trivandrum.

2. The learned counsel for the respondent/complainant submits that the jurisdiction has to be decided on the basis of the averments in the petition. The averments in the petition, according to him, are true and the averments show that the entire transaction was

entered into at Kochi within the jurisdiction of the court, where the matter is now pending. In these circumstances, the prayer for transfer is unjustified, submits the learned counsel for the respondent.

3. As to which allegation is true and which is false, this Court cannot hazard an opinion at this stage of the proceedings. One has to go by the averments in the complaint and the averments in the complaint unmistakably show that the transaction was entered into and the cheque was issued in discharge of the liability at Kochi, within the jurisdiction of the court which has taken cognizance of the offence. In these circumstances, the petitioner will have to wait to raise his contention before the learned Magistrate that the Magistrate has no territorial jurisdiction for the reason that the real transaction took place at Trivandrum.

4. The learned counsel for the petitioner submits that the petitioner is laid up and the indifferent state of his health does not permit him to travel all the way to Ernakulam to participate in the trial. The petitioner is certainly entitled to apply for exemption and I find no reason why the learned Magistrate should unnecessarily and unjustifiably insist on the personal appearance of the petitioner in a prosecution like the instant one - one under Section 138 of the N.I Act.

5. In the result, this Transfer Petition is, dismissed, with the specific observation that the petitioner can apply for exemption from personal appearance and the learned Magistrate must consider such application in accordance with law sympathetically and should not insist on the presence of the petitioner for any purpose unless absolutely essential.

(R.BASANT, JUDGE)

rtr/-